BASTARDS—LEGITIMIZATION—CONSENT OF MOTHER.—ALLISON V. BRYAN, 97 PAC. 282 (OKLA.).—The father of an illegitimate child married a woman not its mother, and sought to legitimate the child by adopting it into his family. To this the mother objected. Both parties appeared to be able to care for the child. *Held,* that the primary question was the preparation of the infant to confront the world in his later life, and that the father was entitled to its custody, for the purpose of legitimization, even though the mother objected. Williams, C. J., *dissenting.*

The general rule is that the mother of an illegitimate child has a right to its custody and control and is bound to maintain it. *Wright v. Wright,* 2 Mass. 109; *Friesner v. Symonds,* 46 N. J. Eq. 521. But the father has no right as against the mother. *Hudson v. Hills,* 8 N. H. 417. Nor is he entitled to it if the mother has moved to another state, married a third person, and deserted the child. *Olson v. Johnson,* 23 Minn. 301. Even the gift of the child to another person will not deprive her of the right to subsequent custody. *Dalton v. State,* 6 Blackf. 357. According to a statute, in one jurisdiction the father was entitled to possession of his illegitimate child after giving a bond for its maintenance. *Wright v. Bennet,* 7 Ill. 587. However, the best interests of the child will be considered when the legal right to custody is not fully and satisfactorily established. *Matter of Nofsinger,* 25 Mo. App. 116.

BREACH OF MARRIAGE PROMISE—DAMAGES—RECOVERY AGAINST HEIRS. —JOHNSON V. LEVY, 47 So. 422 (LA.).—*Held,* that compensatory damages may be recovered against the heirs of the descendant, for his breach of promise of marriage.

At common law an action for breach of promise of marriage, where no special damages are alleged did not survive against the personal representative of the promisor. *Stebbins v. Farmer,* 1 Pick. 70. Because it was regarded as a personal injury and died with the person. *Hayden v. Vreeland,* 37 N. J. L. 372. But a right of action survives against decedant's personal representatives if his breach of promise causes special damage to the property of the promisee. *Finaly v. Chirney,* 20 Q. B. D. 494. And an allegation in a similar action that the promisee had a child born to her out of wedlock, as a result of such promise, is not such an allegation of special damages, to bring it within the rule. *Hovey v. Page,* 55 Me. 142. In two jurisdictions, it is provided by statute that the right of action shall not abate upon the death of the defendant. *Allen v. Baker,* 86 N. C. 91; *Stewart v. Lee,* 46 Atl. 31 (N. H.).

CARRIERS—INJURY TO PASSENGER—CONTRIBUTORY NEGLIGENCE.—JOHNSON V. YAZOO & M. V. R. Co., 47 So. 785 (MISS.).—*Held,* that a passenger is not guilty of contributory negligence as a matter of law in merely riding on the platform of a vestibuled train.

Conflicting views are found on this question but the trend of late decisions appears to be that it is not negligence *per se* to be on the platform while the train is in motion. A railroad is responsible for the safety of passengers in any place it provides for their accommodation. *Globe v. Delaware L. & W. R. R. Co.,* Fed. Cas. No. 5, 488a. And the modern vestibuled platform is for the convenience of passengers and its comparative safety invites use by them. *Marquette v. Chicago & N. W. R. R. Co.,*

33 Ia. 562. Even as to open platform trains it is held in many jurisdictions not negligence *per se* for a passenger to ride on the platform of a car. See *Meesel v. Lynn etc., R. R. Co.*, 8 Allen 234; *Gerstle v. U. P. R. R. Co.*, 23 Mo. App. 361. Contrary to the more liberal view in *Louisville & Nashville R. R. Co. v. Morris*, 23 Ky. L. R. 488; *Camden & Atlantic R. R. Co. v. Hoosey*, 99 Pa. St. 492; *The Cleveland, etc., Railway Co. v. Moneyhun*, 146 Ind. 147, it was declared to be negligence as a matter of law for the passenger to be riding upon the platform and a bar to recovery. For a case in which this rule was asserted but contingent upon the company providing seats. See *Graham v. McNeil*, 20 Wash. 466.

CARRIERS—PASSENGERS ON STREET CAR—RIGHT TO SEAT.—WEEKS V. AUBURN & S. ELECTRIC RY. CO., 113 N. Y. SUPP. 636.—Where plaintiff accepted transportation in a crowded street car and surrendered her ticket. *held*, that she waived strict performance so far as her contract rights were concerned to a seat, and the only duty defendant then owed her was that owing to a passenger who had contracted to ride standing.

The duty of a carrier of passengers to provide fit and suitable accommodations for all passengers that it receives for transportation includes the duty to furnish a seat. *Lane v. Choctaw, O. & G. Ry. Co.*, 91 Pac. 883 (Okl.). A passenger who exhibits his ticket and demands a seat need not surrender the ticket till the seat is furnished. *Hardenbergh v. St. Paul, M. & M. Ry. Co.*, 39 Minn. 3. It is not the duty of the passenger to so act, in providing himself with a seat, that he perform that which more properly is the duty of the conductor. *Louisville, N., O. & T. Ry. Co. v. Patterson*, 69 Miss. 421. Nor does he forfeit any rights by such temporary inconvenience. *Willis v. Long Island Ry. Co.*, 34 N. Y. 676. But if he insists upon his right to a seat he cannot remain standing and ride free; but should repudiate the contract *in toto* by quitting the train at the first suitable opportunity and recover for breach of contract. *Thompson on Carriers of Passengers*, p. 67. Upon refusal to give up ticket he does not thereby become a trespasser and can be ejected only at a regular station. *Maples v. N. Y., N. H. & H. Ry. Co.*, 38 Conn. 557.

CONTRACTS—ACTIONS—MUTUAL MISTAKE.—COHEN V. HABERMAN, 111 N. Y. SUPP. 67.—Plaintiff and defendant had been partners, and the defendant purchased the business and accounts, including rights to indemnity against defalcations of bookkeeper. The cash on hand was to be equally divided. There was no examination of the books at the time, but it was subsequently discovered that the bookkeeper had forged the firm's indorsement on checks received from customers. Forty-five hundred dollars was recovered by the defendant from bondsmen and the bank which cashed the checks, and the plaintiff sought to recover one-half. *Held*, that there was no mutual mistake, and plaintiff could not recover. Scott, J., *dissenting*.

The only causes which render a mistake of fact the subject of relief are the following: First, when the mistake constitutes a material ingredient in the contract of the parties and disappoints their intention by mutual error. *Allen v. Hammond*, 11 Pet. 63; *Scruggs v. Drivers' Executors*, 31 Ala. 274; *Webster v. Stark*, 10 Lea. (Tenn.) 406. Illustrating the above rule is *Dambmann v. Schulting*, 75 N. Y. 55, holding that a mistake